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April 19, 1999 **FILE COPY ORIGINAL**

**BY HAND DELIVERY**

Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
TW-A325  
Washington, D.C. 20550

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re:   Assesment and Collection of Regulatory  
      Fees for Fiscal Year 1999  
      MD Docket No. 98-200**

Dear Ms. Salas:

On behalf of GE American Communications Inc., enclosed please find an original and four copies of the Comments of GE American Communications, Inc. in MD Docket No 98-200. Also enclosed is a disk copy of the comments to be submitted. A disk copy is also being submitted to the International Transcription Service Inc. as required by the Commission's rules in this matter.

If there are any questions regarding this matter, please contact the undersigned directly.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

  
Ronnie London

Attorneys for GE Communications, Inc.

Enclosures

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List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Assessment and Collection ) MD Docket No. 98-200  
of Regulatory Fees for )  
Fiscal Year 1999 )

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys,  
hereby submits its comments in response to the Commission's *Notice of Proposed  
Rulemaking* in the above-referenced proceeding. 1/

INTRODUCTION

GE Americom strongly opposes the Commission's proposal to once  
again raise the regulatory fees for geostationary satellite orbit ("GSO") space  
stations. 2/ We file here with a sense of frustration. Each year since the  
Commission first imposed the fees, GE Americom and other satellite companies  
have been addressing the fundamental failure of the GSO space station rate to  
comply with the statutory mandate that fees be "reasonably related" to the

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1/ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year  
1999*, MD Docket No. 98-200, *Notice of Proposed Rulemaking*, FCC 99-44 (rel. Mar.  
24, 1999) ("NPRM").

2/ See *NPRM* at Attachment E.

regulation of such facilities. We have repeatedly noted that GSO space stations impose relatively little in the way of regulatory burden once the satellites are operational. Yet in the three year period of 1996-98, GSO regulatory fees, already remarkably high, have increased 70% -- from \$70, 575 per satellite to \$119,000. Now the Commission proposes still another increase (to \$130,225) making for a four year increase of fully 85%.

GE Americom is particularly disturbed by this year's proposed GSO fee increase because it was made without first resolving -- or even considering -- the record in the *Notice of Inquiry* on the subject issued by the Commission last year. <sup>3/</sup> GE Americom had taken some encouragement from the fact that the Commission finally seemed prepared to fix the GSO fee problem and other related matters. We and other parties participated actively in the *NOI* process. Yet once again the Commission is simply proposing to increase the GSO fees without correcting the underlying problems that have so inflated the fees in the first place.

This is unacceptable. GE Americom respectfully submits that the Commission should substantially reduce GSO fees this year to reflect the minor regulatory burdens attributable to in-orbit GSO space stations. As necessary, the Commission should recover any leftover costs (such as those that may be

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<sup>3/</sup> *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, *Notice of Inquiry*, FCC 98-298 (rel. Dec. 4, 1998) ("*NOI*"). Among other issues, the *NOI* addresses: (1) the appropriate basis for assessing regulatory fees on GSO licensees; (2) the correct method for establishing the Commission's regulatory costs associated with non-geostationary orbit space station systems; and (3) whether a "new service" fee category should be created. *NOI* at ¶ 4.

attributable to the creation of new services) through general Commission overhead allocated to all payors, including payors who do not hold International Bureau authorizations. The Commission should also make other adjustments necessary to ensure that Comsat and foreign-licensed satellites pay their fair share of the appropriately reduced GSO fees. 4/

**I. GSO LICENSEES SHOULD NOT BE REQUIRED TO SUBSIDIZE NEW SATELLITE SERVICES AND OTHER UNRELATED COSTS**

Section 9 of the Communications Act requires that regulatory fees be “reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” 47 U.S.C. § 159(b)(1)(A). The huge regulatory fee imposed on each GSO space station fails to meet this standard. The regulatory burden placed on the Commission by existing GSOs is minimal, and, if anything, has gradually decreased over the years. For example, the Commission has substantially deregulated satellite services, and most of these services are now offered on a non-common carrier basis. This has eliminated the need for GSO licensees to file tariffs, and has excused the Commission from having to engage in a number of other enforcement-related activities vis-à-vis satellite service providers under Title II of the Communications Act.

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4/ At a minimum, the Commission certainly should not be increasing GSO fees while it completes action in the current NOI proceeding. The Commission at least should adjust its proposed fee schedule to hold GSO fees stable pending adjustment downwards later this year.

Instead, to the extent that GSO operators impose costs on the Commission, those costs are incurred during the application process. GSO licensees, however, already cover such costs through hefty application fees of almost \$90,000 to launch and operate each space station. *See* 47 C.F.R. § 1.1107. Application costs are specifically excluded from those that are to be recovered in regulatory fees.

GE Americom and other satellite companies have never received an adequate accounting to demonstrate how the space station fees are derived. However, in light of the fact that operating GSO space stations do not impose significant costs on the Commission, it must follow that the Commission is charging current GSO operators for substantial activity that is not related to them -- activity that they do not cause and from which they do not benefit. Thus, GSO FSS satellites apparently are being asked to pay the International Bureau's cost of developing new satellite services. This allocation of costs is improper and unfair. GE Americom, for example, should not be required to pay for the development of mobile satellite services or non-geostationary fixed services. We are not applicants or permit holders in these services, some of which already (or later will) compete with our GSO FSS operations.

Similarly, while we concede that we derive some benefit from rulemaking proceedings in the Ka- and V-band where we have authorizations or pending applications, this is irrelevant to a determination of regulatory costs associated with our current fleet of operating GSO satellites. Like other Ka- and V-

band applicants, we have paid application fees to support pre-launch activity.

There is no rational basis for requiring us to pay additional amounts for regulatory work in these bands (while excusing other applicants) simply because we separately operate a number of operational Ku- or C-band satellites. The unfair result is to increase the cost of providing service to current C/Ku band customers, and put us at a cost disadvantage with other parties developing future satellites.

GE Americom is not arguing that the Commission bears no cost at all from operational GSO satellites. We appreciate, for example, the work that the Commission does in the area of international coordination to ensure that our satellites do not receive harmful interference. This work, however, is relatively limited. Our point is that we cannot lawfully be asked to bear a substantial share of the Commission's other regulatory cost recovery burdens merely because we happen to have operational GSO space stations and others do not.

As discussed in our comments in response to the *Notice of Inquiry*, the Commission must ensure that only the direct costs of regulating GSO space stations are assigned to GSO fees. We believe that these costs are a very small percentage of the Commission's regulatory budget. To the extent that the Commission must recover additional costs through regulatory fees, whether attributable to new services or to other activities, those costs should be directly assigned to the beneficiaries, or in the absence of such treatment, allocated as general Commission overhead and recovered from all fee payors, including those who do not hold

International Bureau authorizations. Operating GSO space stations and their customers should not be disproportionately penalized with these huge costs.

## II. COMSAT SHOULD BE REQUIRED TO PAY ITS FAIR SHARE OF REGULATORY FEES

Section 9 of the Communications Act also requires that the Commission recover applicable regulatory costs from entities within its jurisdiction. 47 U.S.C. § 159(a)(1). There is no doubt that Comsat falls within this category. <sup>5/</sup> Comsat files applications pursuant to Title II and Title III of the Communications Act, pays application fees for space stations, and is subject to the Commission's directives with respect to its investments in Intelsat and Inmarsat systems. *See* 47 U.S.C. § 741; *see also id.* at § 158.

Comsat certainly creates costs for the Commission in all of the areas identified by Congress as being relevant to the assessment of regulatory fees. For instance, Comsat's operations require the Commission to engage in enforcement activities with respect to satellite and spectrum management issues, and Comsat clearly derives benefits from the Commission's activities on its behalf. Section 159(b)(1)(A) of the Commission's rules therefore requires that Comsat pay its fair share of regulatory fees.

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<sup>5/</sup> *See* 47 U.S.C. § 741 (deeming COMSAT "fully subject to the provisions of title II and title III of [the] Act"); *see also In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, *Notice of Proposed Rulemaking*, 11 FCC Rcd 16515, 16528 (1996) ("1996 NPRM") (indicating that "approximately 14.7% of the costs attributable to space station regulatory oversight . . . is directly related to Intelsat and Inmarsat Signatory activities").

Nothing in the Satellite Act suggests that Comsat should be exempt from having to pay regulatory fees. <sup>6/</sup> The Commission expressly recognized this when it held that “the costs of [regulatory] activities related to the signatories should be recovered directly from the U.S. Signatories rather than from space station licensees generally.” *1996 NPRM* at 16527-28. While the D.C. Circuit struck down the Commission’s initial attempt to place Comsat in a newly-created fee category, it never held that Comsat was statutorily exempt from having to pay regulatory fees. <sup>7/</sup> The Court only held that the Commission’s creation of a *new* fee category for Comsat (a “Signatory fee”), absent a change in law or policy, was inappropriate. *See Comsat Corp.*, 114 F.3d at 227-28. The Court did not limit the Commission’s ability to apply an *existing* fee category, such as the one for geostationary space stations, to Comsat.

Requiring Comsat to pay its fair share of regulatory fees will contribute significantly to maintaining healthy and robust competition in the marketplace for satellite services. While Comsat competes for customers with private providers of satellite services, Comsat is able to maintain a distinct

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<sup>6/</sup> In the past, COMSAT has argued that the legislative history of the Section 9 prevents the Commission from assessing regulatory fees on COMSAT because “fees [cannot] be applied to space stations operated by international organizations subject to the International Organization Immunities Act, 22 U.S.C. § 288 *et seq.*” *See* H.R. Rep. No. 102-207, 102d Cong., 1st Sess. 26. While the Conference Report may prevent the Commission from assessing regulatory fees directly on INTELSAT and Inmarsat, COMSAT is a private, for-profit, U.S. corporation that is not protected by this provision.

<sup>7/</sup> *See COMSAT Corp. v. Fed. Communications Comm’n*, 114 F.3d 223, 227-28 (D.C. Cir. 1997).



advantage because it is not required to pay GSO space station regulatory fees. Instead, Comsat is able to use its resources as it sees fit, even though Comsat generates significant costs that, under the current fee structure, are being recovered from its competitors. 8/

The Commission can and should subject Comsat to the existing fee category for geostationary space stations. The Commission also should, consistent with the D.C. Circuit's decision, initiate a formal rulemaking to establish a new fee category to recover the Signatory and other expenses created by Comsat. Only through such actions will the Commission succeed in achieving a level playing field and bring GSO regulatory fees in line with the mandate of Section 159(b)(1)(A).

### **III. FOREIGN SATELLITE COMPANIES THAT SERVE THE U.S. MARKET MUST PAY REGULATORY FEES**

As indicated above, the Commission's regulatory fee requirements exist in part to defray the costs associated with conducting rulemaking proceedings and engaging in other regulatory activities. Foreign operators benefit from these proceedings when they serve the U.S. market, and accordingly they should be required to pay their fair share of regulatory fees.

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8/ See 1996 NPRM at 16527 (proposing to establish a Signatory fee for COMSAT "because [the Commission's] geosynchronous space station fee now recovers a significant amount of costs directly attributable to [its] oversight of the U.S. Signatory to [INTELSAT and Inmarsat]").

The Commission deferred consideration of this issue when it established rules for satellite entry in the *DISCO II* proceeding. <sup>9/</sup> However, foreign satellite entry is now in progress and will be accelerating. The Commission should not delay any longer in modifying its rules to distribute a fair share of its regulatory costs to foreign satellite providers. This action is crucial to ensure an equal competitive posture for all satellite service providers operating in this market.

### CONCLUSION

For the reasons stated above, the Commission should not adopt its proposed increase in GSO space station fees. Instead, the Commission should immediately complete a full review of the regulatory costs actually attributed to operating satellites, reduce base fees to that level, and recover any residual amounts (including those attributable to potential new services) through general Commission overhead.

That done, the Commission also should spread the regulatory burden for the GSO category across all satellites under the Commission's jurisdiction,

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<sup>9/</sup> See *In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al.*, IB Docket No. 96-111, *Report and Order*, 12 FCC Rcd 24094, 24169 (1997).

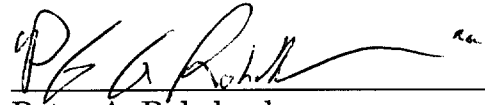
including those of Comsat and foreign satellite service providers. Only by doing so will the Commission meet the statutory obligations of Section 159.

Respectfully submitted,

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